85-1388

No. _____

Supreme Court, U.S.
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CLERK

In the

Supreme Court of the United States

October Term, 1985

Carrie Rose, Widow of
William L. Rose, Jr., Deceased,
Employee ..... *Petitioner*

V.

Arkansas State Police, Employer ..... *Respondent*

Public Employee Claims Division,
Arkansas Insurance Department, Carrier ..... *Respondent*

PETITION FOR WRIT OF CERTIORARI TO REVIEW DECISION OF ARKANSAS COURT OF APPEALS

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5 Hpp

QUESTION FOR REVIEW

Whether Act 929 of 1981, Section 4, of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605 (G)) is violative of the Supremacy Clause of the U.S. Constitution (Article VI, Sec. 2) by providing the $50,000.00 federal benefit paid petitioner under the Public Safety Officers Benefits Act (42 U.S.C. Section 3796) shall be credited against the State's (respondents') liability for payment of worker's compensation death benefits to petitioner, constituting an unlawful conflict in state and federal legislation?

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PETITION FOR WRIT OF CERTIORARI TO REVIEW DECISION OF ARKANSAS COURT OF APPEALS

OPINIONS BELOW

The opinion of the Arkansas Court of Appeals dated October 16, 1985 appears as Appendix A hereto. Rehearing was denied by the Arkansas Court of Appeals on November 13, 1985, with a copy of the order appearing as Appendix B. The Arkansas Supreme Court denied a Petition for Review on November 25, 1985, with a copy of the order appearing as Appendix C. The opinion of the Full Worker's Compensation Commission delivered February 28, 1985 appears herein as Appendix D. The opinion of the Administrative Law Judge dated May 31, 1984 appears herein as Appendix E.

STATEMENT OF JURISDICTIONAL GROUNDS

The opinion of the Arkansas Court of Appeals for which review is sought was delivered on October 16, 1985. A Petition for Rehearing was timely filed and denied by Order of the Arkansas Court of Appeals on November 13, 1985. A Petition for Review was timely filed and denied by the Arkansas Supreme Court order entered November 25, 1985. This Petition is filed within 90 days of such order denying review by the Arkansas Supreme Court.

28 U.S.C. 1257(3) confers jurisdiction upon the Court to review the decision of the Arkansas Court of Appeals in that it decided an important federal question contrary to the decisions of this Court and the U.S. Constitution, rendering an act of Congress meaningless in the State of Arkansas.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article VI, Sec. 2 of U.S. Constitution (Supremacy Clause):

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

42 U.S.C. Sec. 3796 (Public Safety Officers Benefits Act):

> "(a) Amount; recipients. In any case in which the Administration determines, under regulations issued pursuant to this part, that a public safety officer has died as the direct and proximate result of a personal

injury sustained in the line of duty, the Administration shall pay a benefit of $50,000 as follows:

> (1) if there is no surviving child of such officer, to the surviving spouse of such officer;...

(e) Reductions from final benefit payment. The benefit payable under this part shall be in addition to any other benefit that may be due from any other source..."

Act 929 of 1981 of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605(G) (Supp. 1983)):

> "(G) In the event that any public employee who is entitled to receive workers' compensation benefits under the provisions of this Act, as a result of injury, disability or death, and such injuries, disabilities, or death gives rise to an entitlement of benefits under a State or Federal program or under an Act of Congress providing benefits for public safety officers serving a public agency in an official capacity, with or without compensation as a law enforcement officer or as a firefighter or in any other capacity, the state workers' compensation funds shall be entitled to a credit against its liability for payment of workers' compensation benefits to the extent of the benefits received under any State or Federal program or Act of Congress."

STATEMENT OF THE CASE

Petitioner filed her claim under the Arkansas Workers' Compensation Act for benefits as a result of her husband's death in the line of duty as an Arkansas State Police Trooper.

Respondent Public Employee Claims Division of the Arkansas Insurance Department accepted the claim as compensable, but took the position under Act 929 of 1981 (Ark. Stat. Ann. Sec. 12-3605 (g) Supp. 1983)) it was entitled to credit the $50,000 federal benefit paid petitioner under the Public Safety Officers Benefits Act (42 U.S.C. Sec. 3796) against its liability to petitioner for worker's compensation death benefits, resulting in a $50,000 reduction in the worker's compensation death benefits payable to petitioner and negating any benefit to petitioner under the federal act.

The Supremacy Clause issue was raised at every level of the proceedings, such being the primary issue in contention. The federal question was initially raised upon submission of the case to the Honorable James D. Emerson, Administrative Law Judge, upon a Joint Stipulation of Facts (F-1) and written briefs, with the Administrative Law Judge holding Act 929 of 1981 of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605(G) (Supp. 1983)) conflicted with the Public Safety Officers Benefits Act (42 U.S.C. Sec. 3796) under the Supremacy Clause of the U.S. Constitution (Act. VI, Sec. 2), hence respondent was not entitled to credit against its liability to petitioner the $50,000 federal benefit. An excerpt from the Administrative Law Judge's opinion (F-2) follows:

> "The $50,000.00 payment was made under authority of the Public Safety Officers Benefits Act, 42 U.S.C.S. Sec. 3796 (a), as follows:
>
> > (a) In any case in which the Administration, determines,...., that a

> public safety officer has died as the direct and proximate result of a personal injury sustained in the line of duty, the Administration shall pay a benefit of $50,000.00... to the surviving spouse of such officer; (and)
>
> (e) the benefit payable under this part shall be in addition to any other benefit that may be due from any other source...

This Act is in direct conflict with Act No. 929 of 1981 (Ark. Stat. Ann. Sec. 12-3605(G)). Consequently, the latter must fail under the Supremacy Clause of the United States Constitution (Art. VI, Sec. 2).

The following language is adopted from the claimant's brief:

> The language of the Public Safety Officers Benefits Act makes it readily apparent that Congress intended to provide a $50,000.00 benefit to the dependents of "any" public safety officer who dies as a result of personal injuries sustained in the line of duty, not just those who die in states other than Arkansas. Congress went on to provide in Sec. 3796 (e) of 42 U.S.C.S.:
>
> > 'The benefit payable under this part *shall be in addition to any other benefit* that may be due from any other source...' (emphasis added)
>
> The use of the language 'shall be in addition to' makes it abundantly clear Congress intended for the $50,000.00 federal benefit to be paid in addition to state Workers' Compansation benefits. 'Any other benefit' includes Workers' Compensation benefits. The use of the word "shall" makes it mandatory, not only for the benefit to be paid, but for the Courts to

> enforce the right to the benefit. The obvious purpose and objective of Congress was to provide a $50,000.00 payment to a police officer's dependents in addition to whatever payments or benefits they received from other sources, including Workers' Compensation benefits. Workers' Compensation benefits are not new, and Congress surely was aware of such in enacting this provision. Nevertheless, the language is plain and and unmistakable.'"

(E-3)

The Full Worker's Compensation Commission reversed, holding there is no conflict in the state and federal statutes named, and the Supremacy Clause of the U.S. Constitution does not invalidate the state statute under which respondent claims credit against its liability. (A-3)

The Arkansas Court of Appeals affirmed the decision of the Full Commission after considering the Supremacy Clause issue, stating: "We fail to see a Supremacy Clause argument." (A-5) A Petition for Rehearing raising the Supremacy Clause issue was denied by the Court of Appeals without comment. (B-1) A Petition for Review raising the Supremacy Clause issue was also denied by the Arkansas Supreme Court without comment. (C-1)

ARGUMENT - REASONS FOR ALLOWANCE OF WRIT

Act 929 of 1981, Section 4, of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605(G) is violative of the Supremacy Clause of the U.S. Constitution (Article VI, Sec. 2) by providing the $50,000.00 federal benefit paid petitioner under the Public Safety Officers Benefits Act (42 U.S.C. Section 3796) shall be credited against the State's (respondents') liability for payment of worker's compensation death benefits to petitioner.

This case concerns a conflict between state and federal statutes and presents a compelling question for decision by this Court, since the effect of the state statute, Act 929 of 1981 of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605(G) (Supp. 1983)), and the decision of the Arkansas Court of Appeals for which review is sought, was to render an Act of Congress, the Public Safety Officers Benefits Act (42 U.S.C. Sec. 3796), meaningless in the State of Arkansas, contrary to the express language of such act, the intent of Congress and the decisions of this Court. The actual effect of Act 929 of 1981 converts the $50,000.00 gratuity intended Congress for the widow or other dependents of police officers killed in the line of duty into a $50,000 subsidy for the State of Arkansas' worker's compensation program for public employees by providing for such $50,000.00 benefit to be credited against the state's liability to petitioner for worker's compensation death benefits, a wholly anomalous result. Not only is the petitioner aggrieved, but all other widows and dependents of police officers killed in the line of duty in Arkansas.

Respondents Public Employee Claims Division of the Arkansas Insurance Department and Arkansas State Police conceded the compensability of the worker's compensation claim of petitioner, Carrie Rose, widow of Arkansas State Police Trooper, William L. Rose, Jr., whose death on December 28, 1982 arose out of and in the course of his employment as a State Police Trooper.

Following Trooper Rose's death, petitioner Carrie Rose received from the federal government a $50,000.00 benefit payable to her under the provisions of the Public Safety Officers Benefits Act, (42 U.S.C. Sec. 3796) following a determination of the U.S. Department of Justice Trooper Rose died as a direct and proximate result of injuries sustained in the line of duty.

The question presented for review is whether respondent Public Employee Claims Division is entitled to credit against its liability for payment of workers' compensation death benefits to petitioner Carrie Rose the $50,000.00 federal benefit paid petitioner under the Public Safety Officers Benefits Act (42 U.S.C. Sec. 3796) by virtue of Act 929 of 1981, codified at Ark. Stats. Ann. 12-3605(G) (Supp. 1983), which provides as follows:

> "In the event that any public employee who is entitled to receive workers' compensation benefits under the provisions of this Act, as a result of injury, disability or death, and such injuries, disabilities, or death gives rise to an entitlement of benefits under a State or Federal program or under an Act of Congress providing benefits for public safety officers serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or as a firefighter or in any other capacity, the state workers' compensation funds shall be entitled to a credit against its liability for payment of workers' compensation benefits to the extent of the benefits received under any State or Federal Program or Act of Congress."

The federal benefit the foregoing Arkansas statutory provision was intended to take advantage of is provided under the Public Safety Officers Benefits Act (42 U.S.C. Sec. 3796(a), pertinent portions of which follows:

> "(a) In any case in which the Administration determines, ..., that a public safety officer has died as the

> direct and proximate result of a personal injury sustained in the line of duty, the Administration shall pay a benefit of $50,000.00... to the surviving spouse of such officer; (and)
>
> (e) the benefit payable under this part shall be in addition to any other benefit that may be due from any other source..."

Since the quoted provision of the Public Safety Officers Benefits Act expressly provides that the $50,000.00 benefit payable under the Act "*shall be in addition* to any other benefit that may be due from any other source" and the quoted provision of the state law expressly provides respondent Public Employee Claims Division, "shall be entitled to a credit against its liability for payment of workers' compensation benefits to the extent of the benefits received under any State or Federal program or Act of Congress", and since the purposes of the state and federal statutes clash, an obvious conflict between the state and federal law is presented.

The question of whether the state law conflicts with the federal law and hence is violative of the Supremacy Clause of the U.S. Constitution was initially presented to an Arkansas Worker's Compensation Administrative Law Judge, the Honorable James D. Emerson, who found in the petitioner's favor, holding the Arkansas act conflicted with and was superseded by the federal act, and the respondents were entitled to no credit. (E-2) The Full Worker's Compensation Commission reversed, (D-1) and its decision was upheld by the Arkansas Court of Appeals. (A-2) Subsequent Petitions for Rehearing and Review were denied by the Arkansas Court of Appeals and the Arkansas Supreme Court, respectively (B-1) and C-1). Application is now made to this Court for review of the state court decision and determination of the important federal question involved.

In order to determine the proper resolution of the conflict between the state and federal acts, an examination of

constitutional principles and decisions is required. Article VI, Sec. 2 of the United States Constitution, commonly known as the Supremacy Clause, provides:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

In analyzing the application of the Supremacy Clause, the following provisions are helpful. 16 Am. Jur. Constitution Law, Sec. 74 at pg. 394 provides in part as follows:

> "Since the Constitution provides that the laws of the United States made in pursuance thereof shall be the supreme law of the land, and anything in the constitution or laws of any state to the contrary notwithstanding, an Act of Congress constitutionally passed within the limits of its authority becomes part of the supreme law of the land in connection with the Federal Constitution itself. Federal statutes operate essentially as a part of the law of each state and are as binding on its authorities and people as are its own local constitution and laws in the same manner as if they were actually embodied in the Federal Constitution, and are controlling over state constitutional or statutory provisions."

Sec. 80 of 16 Am. Jur. 2nd Constitutional Law at pg. 404 provides further in part:

> "Since laws enacted in pursuance of the Federal Constitution are given supreme status by the terms of the Constitution itself, it follows that such federal laws control the constitutions and the laws of the states, and cannot be controlled by them. State laws are always subordinate and federal laws enacted pursuant to the Constitution are always paramount,

> hence the State law is void if contrary to a valid Act of Congress... In resolving a contention that a particular state statute is invalid under the supremacy clause as conflicting with the federal statute, *the controlling principle is whether the state statute interferes with and frustrates the federal statute*, and not merely whether the state statute is designed for some conceivable state purpose. In other words, the existence *vel non* of a conflict depends on effect of the state statue and cannot be determined merely by a consideration of its purpose." (emphasis added)

One of the leading cases applying the Supremacy Clause in conflicts of this nature between state and federal law is *Hines v. Davidowitz*, 312 U.S. 52, 61 S.Ct. 339, 85 L.Ed.2d 581 (1941). In *Hines*, this Court articulated the oft-quoted test applicable to Supremacy Clause controversies of this kind at page 67 of 312 U.S.:

> "Our primary function is to determine whether, under the circumstances of this particular case, Pennsylvania's law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

In view of the *Hines* test, we must initially examine the purposes and objectives of Congress in order to determine whether those purposes and objectives are frustrated by the application of the state act.

The language of the Public Safety Officers Benefits Act makes it readily apparent that Congress intended to provide a $50,000.00 benefit to the dependents of "any" public safety officer who dies as a result of personal injuries sustained in the line of duty, not just those who die in states other than Arkansas. Congress went on to provide in Sec. 3796 (e) of 42 U.S.C.:

> "The benefit payable under this part *shall be in addition to any other benefit* that may be due from any other source..." (emphasis added)

The use of the language "shall be in addition to" makes it abundantly clear Congress intended for the $50,000.00 federal benefit to be paid in addition to state Workers' Compensation benefits. "Any other benefit" includes Workers' Compensation benefits. The obvious purpose and objective of Congress was to provide a $50,000.00 payment to a police officer's dependents in addition to whatever payments or benefits they received from other sources, including Workers' Compensation benefits.

Legislative history is also helpful in determining Congressional intent. An excerpt from the official Congressional committee reports appearing in U.S. Code Congressional and Administrative News, Volume 3, 1979, at pg. 2529 follows:

> "The committee has rejected suggestions that the Public Safety Officers Benefits program be transferred from LEAA to the Department of Labor, which administers the provisions for compensation of State and local law enforcement officers injured while enforcing a Federal law. The Public Safety Officers Benefits Program is an outstanding example of efficient government. *Under the PSOB Act, the surviving dependents of State and local public safety officers killed in the line of duty as a result of a personal injury are entitled to a $50,000.00 gratuity.* LEAA has taken a very active role in meeting the needs of the families of these officers. It generally takes less than two months from the time a claim is filed until a final determination is made. This is impressive given the amount of investigation frequently needed and the limited staff available in the PSOB office.
>
> *The committee feels that it would be unfortunate to take any action which might impede the effectiveness of this operation.*" (emphasis added)

The foregoing portion of the official committee report makes it clear Congress intended to provide a $50,000.00

gratuity to police officers, and that Congress intended to zealously safeguard the full implementation and effectiveness of the program providing for such benefit, as indicated by the last sentence quoted.

Here, the previously quoted state law respondent Public Employee Claims Division seeks to apply would clearly stand "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress", in the language of *Hines*, supra. In fact, by taking away from the petitioner entitlement to worker's compensation benefits equal to the federal benefit paid, application of the state law effectively nullifies the $50,000.00 benefit paid petitioner under the federal act, as well as obviously defeating the benevolent intent of Congress. What the federal law gives, the state law takes away. The Supremacy Clause prohibits such contravention of federal law by a state enactment. As applied, the state act effectively shifts the burden to the federal government for the first $50,000.00 of Workers' Compensation death benefits payable to petitioner and all other widows and dependents similarly situated. Congress intended to provide a $50,000.00 gratuity the dependents of police officers killed in the line of duty, not subsidize the State of Arkansas Worker's Compensation program.

A more recent case, *Perez v. Campbell*, 402 U.S. 637, 91 S.Ct. 1704, 29 L.Ed.2d 233 (1971), applied the *Hines* test in determining whether Arizona's Motor Vehicle Safety Responsibility Act providing for suspension of a motorist's license for permitting an unsatisfied judgment against such motorist to remain unsatisfied for 60 days conflicted with the Bankruptcy Act and hence was violative of the Supremacy Clause of the Federal Constitution. In resolving the question, this Court stated at pg. 239 of 29 L.Ed.2d the proper mode of analysis:

> "Deciding whether a state statute is in conflict with a federal statute and hence invalid under the

> Supremacy Clause is essentially a two-step process of first ascertaining the construction of the two statutes, and then determining the constitutional question whether they are in conflict."

In construing the Bankruptcy Act, this Court in *Perez*, supra, stated that one of the primary purposes of the Bankruptcy Act was to give debtors "a new opportunity in life" unhampered by pre-existing debt. The purpose of the state Act was to require financial responsibility on the part of motorist. This Court went on to say at pg. 242 of 29 L.Ed.2d:

> "With the construction of both statutes clearly established, we proceed immediately to the constitutional question whether a state statute that protects judgment creditors from 'financially irresponsible persons' is in conflict with a federal statute that gives discharged debtors a new start 'unhampered by the pressure and discouragement of pre-existing debt.' *As early as Gibbons v. Ogden, 9 Wheat 1, 6 L.Ed. 23 (1824), Chief Justice Marshall stated the governing principle that 'acts of the State Legislatures... [which] interfere with, or are contrary to the laws of Congress, made in pursuance of the constitution,' are invalid under the Supremacy Clause.* Three decades ago Mr. Justice Black, after reviewing the precedents, wrote in a similar vein that, while 'this Court in considering the validity of state laws in the light of treaties or federal laws touching the same subject, had made use of the following expressions: conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability; inconsitency; violation; curtailment; and interference,...*in the final analysis,' our function is to determine whether a challenged state statute 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'* (cites omitted) Since *Hines* the Court has frequently adhered to this articulation of the meaning of the Supremacy Clause." (cites omitted) (emphasis added)

In holding the portion of the State Motor Vehicle Responsibility Act invalid under the Supremacy Clause, the Court stated at pg. 243 of 29 L.Ed.2d 233:

> "We can no longer adhere to the aberrational doctrine...that state law may frustrate the operation of federal law as long as the state legislature in passing its law had some purpose in mind other than one of frustration."

In view of *Perez*, supra, it is clear the primary consideration is the effect of state legislation on fulfillment of the purposes of Congress in determining the validity of the state law under the Supremacy Clause. Here, there can be no question the state law in question defeats the purpose of Congress in providing a $50,000.00 gratuity to the dependents of police officers killed in the line of duty over and above all other benefits received. Hence, the particular provision of the Arkansas act must yield to the provision of the federal act which provides the federal benefit "shall be in addition to any other benefit". To hold otherwise would permit the State legislature to effectively frustrate, thwart and nullify the purpose of Congress in enacting the federal law. See also *Ham v. Rockhill*, 379 U.S. 306, 85 S.Ct. 384, 13 L.Ed.2d 300; *Maryland v. Louisiana*, 451 U.S. 748, 101 S.Ct. 2114, 68 L.Ed.2d 576 (1981); *Pritchard v. Downie*, 201 F. Supp. 893, Affirmed 309 F. 2d 6345 (1962); and *First Federal S & L Ass'n., Etc. v. Myrick*, 533 F. Supp. 1041, (W.D. Ark. 1982).

CONCLUSION

Act 929 of 1981 relied upon by respondent Public Employee Claims Division must yield to and is superseded by the provisions of the Public Safety Officers Benefits Act under the Supremacy Clause of the U.S. Constitution, such federal act expressly providing the $50,000.00 benefit "shall be in addition to" any other benefits from any other source. The effect of the Arkansas Act is to shift the burden to the federal government for the first $50,000.00 in worker's compensation death benefits payable to dependents of police officers killed in Arkansas. The only benefit is to the State of Arkansas, not the petitioners and others like her. Congress did not intend such a result. Petitioner respectfully prays that a Writ of Certiorari issue to review the decision of the Arkansas Court of Appeals.

Respectfully submitted,

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO REVIEW DECISION OF ARKANSAS COURT OF APPEALS

A.

DIVISION II

ARKANSAS COURT OF APPEALS
No. CA 85-155

Opinion Delivered
October 16, 1985

CARRIE ROSE, Widow of WILLIAM L. ROSE, JR., Deceased Employee

APPELLANT

v.

ARKANSAS STATE POLICE, and PUBLIC EMPLOYEE CLAIMS DIVISION

APPELLEE

AN APPEAL FROM THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AFFIRMED

DONALD L. CORBIN, Judge

The facts of this case are not in dispute. William Rose, an Arkansas State Trooper, was killed in the line of duty on December 28, 1982. Appellant, his widow, was paid a $50,000 benefit under the Public Safety Officers' Death Benefits Act, 42 U.S.C. § 3796 (1982). She also received an award of $10,000 pursuant to Ark. Stat. Ann. § 12-2348 (Repl. 1979) [1] and an additional award of $5,000 pursuant to Ark. Stat. Ann. § 42-427 (Repl. 1977). Appellee, Public Employee Claims Division, Arkansas Insurance Department, acknowledges that the claim for death benefits is com-

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This was amended by Act 839 of 1985 which increased benefits available up to $100,000.

pensable under the Workers' Compensation Act but contends that it is entitled to a credit against its liability to the extent of the three death benefits totaling $65,000 received by the widow. The Commission reversed the decision of the Administrative Law Judge who refused to credit the $65,000 against workers' compensation benefits. The Commission relied on Ark. Stat. Ann. § 12-3605(G) (Supp. 1985), which provides:

> (G) In the event that any public employee who is entitled to receive workers' compensation benefits under the provisions of this Act, as a result of injury, disability or death, and such injuries, disabilities, or death gives rise to an entitlement of benefits under a State or Federal program or under an Act of Congress providing benefits for public safety officers serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or as a firefighter or in any other capacity, the state workers' compensation funds shall be entitled to a credit against its liability for payment of workers' compensation benefits to the extent of the benefits received under any State or Federal program or Act of Congress.

The Commission granted appellee a credit of $65,000 against death benefits under the Arkansas Workers' Compensation Act. We affirm.

Appellant, as her first assignment of error, alleges that the Full Commission erred in holding that Act 929 of 1981, Ark. Stat. Ann. § 12-3605(G), was not superseded by the Public Safety Officers' Death Benefits Act under the Supremacy Clause, U.S. Const. art. VI, § 2. Appellant relies on the following pertinent provision of the Public Safety Officers Benefits Act:

> (a) In any case in which the Administration determines, ..., that a public safety officer has died as the direct and proximate result of a personal injury sus-

> tained in the line of duty, the Administration shall pay a benefit of $50,000.00...to the surviving spouse of such officer; (and)
>
> (e) the benefit payable under this subchapter shall be in addition to any other benefit that may be due from any other source...

This section, together with the Supremacy Clause, appellant argues, circumvents the limiting effects of Ark. Stat. Ann. § 12-3605(G).

It is axiomatic that under the terms of the United States Constitution, certain powers are entrusted to the federal government alone, while others are reserved to the states, and still others may be exercised concurrently by both the federal and state governments. The 10th Amendment to the United States Constitution provides:

> *Rights reserved to states or people.* — The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

U.S. Const. amend. X.

The constitutionality of an offset between federal benefits and state benefits was recognized in *Richardson v. Belcher*, 404 U.S. 78 (1971). Mr. Justice Stewart, in upholding Section 224 of the Social Security Act, 42 U.S.C. § 424a (1982), which requires a reduction in social security benefits to reflect workers' compensation benefits, noted that:

> The original purpose of state workmen's compensation laws was to satisfy a need inadequately met by private insurance or tort claim awards. Congress could rationally conclude that this need should continue to be met primarily by the States, and that a federal program that began to duplicate the efforts

> of the States might lead to the gradual weakening or atrophy of the state programs.

Id. at 84.

Congress has not shown a clear-cut manifestation of an intent to exercise supremacy over a state's right to legislate workers' compensation benefits by the passage of the Public Safety Officers' Death Benefits Act. We fail to see a supremacy clause argument. This is especially true when similar cases dealing with federal-state setoffs have been upheld constitutionally.

Finally, appellant alleges that the Full Commission erred in construing Act 929 of 1981 to require crediting of benefits paid by Arkansas Claims Commission and Arkansas State Police against appellee's liability to appellant. Appellant received a $10,000 benefit from the Arkansas Claims Commission pursuant to Ark. Stat. Ann. §12-2348, and $5,000 from the Arkansas State Police pursuant to Ark. Stat. Ann. § 42-427, following a determination that Trooper Rose lost his life in the line of duty.

"The controlling consideration in the interpretation of a workmen's compensation statute is that the act must be liberally construed with all doubts resolved in favor of the claimant, which is necessary to effect the beneficient and humane purposes of the Act," *Mohawk Rubber Co. v. Buford*, 259 Ark. 614, 535 S.W.2d 819 (1976). However, we can not avoid the crystal clear language of Ark. Stat. Ann. § 12-3605(G) which mandates the crediting of "benefits received under any State or Federal Program or any Act of Congress" against workers' compensation benefits. It is obvious from a review of cases from other states that this is not an unknown or unheard-of proposition. *Nooe v. Baltimore*, 28 Md. App. 348, 345 A.2d 134 (1974), (applied Maryland statute which discharged city's obligation under workers' compensation law where employee received benefits, in excess of those due under workers' compensation law, from the

employer under a city ordinance); *Coletta v. State*, 106 R.I. 764, 263 A.2d 681 (1970), (held that statute authorized the state to credit payments received from the federal government against benefits due under workers' compensation law); *State v. Industrial Commission*, 160 Ohio St. 443, 117 N.E.2d 22 (1954), (held that the Ohio General Assembly had power to enact Workers' Compensation Act and to determine under what terms and conditions employees are eligible to participate). Legislation in other states providing for off-set of workers' compensation benefits against benefits available under other state or federal programs has been strictly construed. In *Contois v. State*, 95 R.I. 296, 186 A.2d 741 (1962), Roland Contois's widow and minor children applied for workers' compensation benefits in Rhode Island after Roland Contois died while on active duty in the Rhode Island National Guard. The Rhode Island Workers' Compensation Commission sought to offset workers' compensation benefits with benefits accruing under a federal act.

R.I. Gen. Laws § 28-31-11 (1968 Renactment) provides:

> Where an injured member of the national guard or the Rhode Island state guard receives pay, subsistence, hospitalization, or other benefits from the United States as the result of such injury, such payments shall not affect his right to receive compensation under chapters 29 to 38, inclusive, of this title. When the payments received from the United States are less than he would have been entitled to receive under said chapters, then he shall be entitled to receive all the benefits to which he would have been entitled under said chapters less the benefits actually received from the United States.

The Rhode Island Supreme Court held that since provision § 28-31-11 is silent as to death benefits, the legislature did not intend that it should be applicable in such a situation.

A majority of American jurisdictions provide some form of setoff in the area of wage-loss legislation. 4 Larson, Law of Workmen's Compensation § 97.20. The Arkansas

General Assembly has the authority to legislate offsetting of benefits and it has chosen to do so with the enactment of Ark. Stat. Ann. § 12-3605(G). Budgetary management is an increasingly burdensome task for the members of the legislature. The goal may very well be to avoid "double-dipping," i.e., receiving benefits from more than one source for the same death or injury. For whatever reason, our Constitution does not empower this Court to second-guess our legislators who are charged with the awesome responsibility of spreading the public dollar over endless programs for the public welfare. If the legislature does not intend for Ark. Stat. Ann. § 12-3605(G) to be applicable in cases such as the one at bar, then it needs to deal directly with the issue. The power to do so is entirely within the legislature's province. We find no error.

AFFIRMED.

Cooper and Glaze, JJ., agree.

B.

OFFICE OF THE CLERK
SUPREME COURT OF THE STATE OF ARKANSAS
ARKANSAS COURT OF APPEALS
LITTLE ROCK

November 13, 1985

Noyl Houston
Attorney at Law
P.O. Box 1233
Jonesboro, AR 72403

RE: CA85-155 Carrie Rose, Widow v. Arkansas State Police et al

Dear Mr. Houston:

The Arkansas Court of Appeals made the following order today in the above styled case:

"Petition for Rehearing is denied."

Sincerely yours,

/s/ Dona L. Williams
Dona L. Williams, Clerk

DLW:mf

cc: Jerry G. James
Commission

C-1

C.

OFFICE OF THE CLERK
SUPREME COURT OF THE STATE OF ARKANSAS
ARKANSAS COURT OF APPEALS
LITTLE ROCK

November 25, 1985

Noyl Houston
Attorney at Law
P.O. Box 1233
Jonesboro, AR 72403

Re: 85-267 Carrie Rose, Widow v. Arkansas State Police et al

Dear Mr. Houston:

The Court made the following order in the above styled case today:

"Petition for Review is denied.
Purtle, J., not participating."

Sincerely yours,

/s/ Dona L. Williams
Dona L. Williams, Clerk

DLW:rh

cc: Jerry G. James

D.

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. D306148

CARRIE ROSE, WIDOW OF WILLIAM L. ROSE, JR., DECEASED EMPLOYEE — CLAIMANT

ARKANSAS STATE POLICE, PUBLIC EMPLOYER — RESPONDENT

OPINION FILED FEBRUARY 28, 1985

Review by the FULL COMMISSION in Little Rock, Arkansas.

Claimant represented by NOYL HOUSTON, Attorney at Law, Trumann, Arkansas.

Respondent represented by JERRY G. JAMES, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

Opinion by Rotenberry, Chairman.

This case is before the Full Commission on appeal by respondent from a decision of an Administrative Law Judge dated May 31, 1984, holding that respondent is not entitled to a credit against its workers' compensation liability for state and federal benefits paid to claimant in connection with her husband's death. It is our determination that the decision of the Administrative Law Judge must be reversed. This case has been presented to the Commission upon a complete stipulation of facts. That stipulation is summarized as follows.

On December 28, 1982, the decedent, William L. Rose, Jr., died in the line of duty as an Arkansas State Trooper employed by the Arkansas State Police. The decedent's death is therefore stipulated to be compensable under the Arkansas Workers' Compensation Act.

The decedent's sole dependent under the Workers' Compensation Act is claimant, his surviving wife, and at the time of his death decedent's average weekly wage was such as would entitle claimant to the then maximum benefit rate of $140.00 a week.

Subsequent to decedent's death, claimant applied for and received from the federal government a $50,000.00 benefit payable to her under the provisions of the Public Safety Officers Benefits Act, 42 U.S.C. §3796(E).

Claimant also applied for and received from the Arkansas Claims Commission a $10,000.00 benefit payable to her under the provisions of Act 43 of 1969, as amended, codified as Ark. Stat. Ann. §12-2348.

Claimant also applied for and received from the Arkansas State Police Commission a $5,000.00 benefit payable to her under the provisions of Act 91 of 1959, as amended, codified as Ark. Stat. Ann. §42-427.

Respondent, while conceding that the decedent's death has given rise to a compensable workers' compensation claim, contends that it is entitled to a credit against its compensation liability in the aggregate amount of $65,000.00, the total sum claimant has received under the aforementioned federal and state benefit programs, by reason of Act 929 of 1981, codified as Ark. Stat. Ann. §12-3601 *et seq.* Specifically, Ark. Stat. Ann. §12-3605(G) states:

> In the event that any public employee who is entitled to receive workers' compensation benefits under the provisions of this Act as a result of injury, disability or

> death, and such injuries, disabilities, or death gives rise to an entitlement of benefits under a State or Federal program or under an Act of Congress providing benefits for public safety officers serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or as a firefighter or in any other capacity, the state workers' compensation funds shall be entitled to a credit against its liability for payment of workers' compensation benefits to the extent of the benefits received under any State or Federal program or Act of Congress.

The Administrative Law Judge has ruled that Ark. Stat. Ann. §12-3605(G) is in conflict with the Public Safety Officers Benefits Act, a federal statute, and consequently the state statute providing for a credit is invalid. The Administrative Law Judge also ruled with respect to the state benefits collected by claimant that Ark. Stat. Ann. §12-3605(G) simply has no application to these payments.

It is our conclusion that the Administrative Law Judge erred in his interpretation of the various state and federal statutes applicable to this case. Act 929 of 1981 [Ark. Stat. Ann. §12-3605(G)] clearly provides for the credit which the respondent, the State of Arkansas, is claiming in this case. We see no conflict between Act 929 of 1981 and the Public Safety Officers Benefits Act, 42 U.S.C. §3796(E). Thus, the Supremacy Clause of the United States Constitution does not operate to invalidate the state statute under which respondent is claiming a credit against its liability in this case. We also see no conflict between either of the state benefit program statutes involved, Ark. Stat. Ann. §12-2348 and Ark. Stat. Ann. §42-427, and Act 929 of 1981. The wisdom and the policy of allowing the State of Arkansas a credit against its liability is a matter which addresses itself to the legislature. The duty of this quasi-judicial tribunal is merely to give effect to the statute if valid and applicable to the facts of a given case.

The decision of the Administrative Law Judge is reversed and respondent is hereby found to be entitled to a credit in the aggregate amount of $65,000.00 against its liability to the claimant for workers' compensation benefits.

IT IS SO ORDERED.

/s/ Burl C. Rotenberry
BURL C. ROTENBERRY, Chairman

/s/ Allyn C. Tatum
ALLYN C. TATUM, Commissioner

/s/ J. Melvin Farrar
J. MELVIN FARRAR, Commissioner

E.

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. D306148

CARRIE ROSE, WIDOW OF WILLIAM L. ROSE, JR., DECEASED, EMPLOYEE — CLAIMANT

ARKANSAS STATE POLICE, EMPLOYER — RESPONDENT

ARKANSAS INSURANCE DEPARTMENT PUBLIC EMPLOYEE CLAIMS DIVISION, INSURANCE CARRIER — RESPONDENT

OPINION FILED MAY 31, 1984

This matter comes forth on Stipulations of Fact and Briefs of the parties.

Claimant represented by the HONORABLE NOYL HOUSTON, Attorney at Law, Trumann, Arkansas.

Respondent represented by the HONORABLE JERRY JAMES, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

This matter comes on to consider whether the respondent herein should be allowed a credit for sums paid to the widow through outside sources.

It was stipulated that the deceased was employed by the respondent on December 28, 1982, when he was killed in the line of duty. He earned wages sufficient to entitled him to benefits at the rate of $140.00 per week. The deceased widow was paid $50,000.00 under the provisions of the Public Safety

Officers Benefits Act (42 U.S.C.S. Sec. 3796). Furthermore, the Arkansas Claims Commission paid an additional $10,000.00 in benefits under Ark. Stat. Ann. §12-2348. Also, the Arkansas State Police Commission paid $5,000.00 to the deceased's widow. All of these payments were based upon the fact that the deceased employee was killed in the line of duty as an Arkansas State Police officer. The point of controversy comes about when the respondent workers' compensation carrier attempts to assert a credit for workers' compensation benefits on the amounts previously set forth above from unrelated sources. The respondent-carrier bases its contention for credit on Act No. 929 of 1981 (Ark. Stat. Ann. §12-3605(g).

From all of the facts and the evidence, I make the following:

FINDINGS AND CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On December 28, 1982, the relationship of employee-employer-carrier existed among the parties.

3. On December 28, 1982, the claimant earned wages sufficient to entitled him to weekly compensation benefits of $140.00.

4. On December 28, 1982, the claimant sustained an injury arising out of and in the course of his employment.

5. The claimant's widow is entitled to full and complete workers' compensation benefits.

6. The respondent is not entitled to credit for payments made through other sources.

7. The respondent has controverted the payment of all benefits.

The $50,000.00 payment was made under authority of the Public Safety Officers Benefits Act, 42 U.S.C.S. §3796 (a), as follows:

> "(a) In any case in which the Administration, determines, . . ., that a public safety officer has died as the direct and proximate result of a personal injury sustained in the line of duty, the Administration shall pay a benefit of $50,000.00 . . . to the surviving spouse of such officer; (and)
>
> (e) the benefit payable under this part shall be in addition to any other benefit that may be due from any other source . . . "

This Act is in direct conflict with Act No. 929 of 1981 (Ark. Stat. Ann. §12-3605 (g). Consequently, the latter must fail under the Supremacy Clause of the United States Constitution (Art. VI, Sec. 2).

The following language is adopted from the claimant's brief:

> "The language of the Public Safety Officers Benefits Act makes it readily apparent that Congress intended to provide a $50,000.00 benefit to the dependents of "any" public safety officer who dies as a result of personal injuries sustained in line of duty, not just those who die in states other than Arkansas. Congress went on to provide in Sec. 3796 (e) of 42 U.S.C.S.:
>
> > 'The benefit payable under this part *shall be in addition to any other benefit* that may be due from any other source...' (Emphasis added)
>
> The use of the language 'shall be in addition to' makes it abundantly clear Congress intended for the $50,000.00 federal benefits to be paid in addition to state Workers' Compensation benefits. 'Any other benefit' includes Workers' Compensation benefits. The use of the word

"shall" makes it mandatory, not only for the benefit to be paid, but for the Courts to enforce the right to the benefit. The obvious purpose and objective of Congress was to provide a $50,000.00 payment to a police officer's dependents in addition to whatever payments or benefits they received from other sources, including Workers' Compensation benefits. Workers' Compensation benefits are not new, and Congress surely was aware of such in enacting this provision. Nevertheless, the language is plain and unmistakable."

The $5,000.00 benefit from the Arkansas State Police Commission is codified under Ark. Stat. Ann. §42-427. I do not believe that the framers of Act No. 929 of 1981 intended to take away with one hand that which is given by the other. Likewise, I do not believe that the intent of the framers of this Act was to subsidize the respondent. If we followed the interpretation of the respondent, they would be collecting subsidies from all sorts of unknown and unwilling sources. I think that we can all rest assured that the Arkansas Claims Commission and the Arkansas Police Commission did not intend to subsidize the Public Employee Claims Commission by the payment of their respective benefits. These two agencies created a benefit, over and above that due the rank and file of State employee, due to the hazardous nature of the job. Now, under the heresy of some misguided legislation, the respondent is attempting to take these methods away. The fundamental purpose of the Arkansas Workers' Compensation Act forbids the conclusion espoused by the respondent.

The respective parties in this action have prepared excellent briefs. Certain passages have been used in this opinion. However, the claimant's brief and reply are adopted and made a part of this opinion, and attached thereto as though set out herein word for word.

AWARD

The respondent is hereby ordered and directed to pay to the claimant widow full and complete workers' compensa-

tion benefits in accordance with this opinion and without regard to other payments made from any other source.

The respondent shall pay to the claimant's attorney, the Honorable Noyl Houston, the maximum statutory attorney's fee on this entire award.

This award shall bear interest pursuant to §19 (g) until paid.

The respondent's claim for credit based upon other benefits is specifically denied.

IT IS SO ORDERED.

/s/ James D. Emerson
JAMES D. EMERSON
Administrative Law Judge

rh

F.

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. D306148

CARRIE ROSE, WIDOW OF WILLIAM LONZO ROSE, JR., DECEASED, EMPLOYEE — CLAIMANT

VS.

ARKANSAS STATE POLICE, EMPLOYER — RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION, ARKANSAS INSURANCE DEPARTMENT, CARRIER — RESPONDENT

JOINT STIPULATION OF FACTS

COME the parties, Carrie Rose, widow of William Lonzo Rose, Jr., deceased, as claimant, and the Arkansas State Police and the Public Employee Claims Division of the Arkansas Insurance Department, as respondent-employer and respondent-carrier respectively, and hereby enter into the following Joint Stipulation of Facts:

That on December 28, 1982, the decedent William Lonzo Rose, Jr. was gainfully employed as a State Trooper by the Arkansas State Police. That on that date, Trooper Rose died, which death arose out of and in the course of his employment and therefore, qualifies as a compensable death under the provisions of the Arkansas Workers' Compensation Act.

That at the time of his death, Trooper Rose left surviving as his sole heir and dependent, his wife, Carrie Rose

who, as such dependent, has made claim for death benefits under Section 15 of the Arkansas Workers' Compensation Act. That at the time of his death the decedent was earning an average weekly wage of $400.00 which, under the provisions of Section 15(c) First of the Act, would qualify decedent's widow for death benefits of $140.00 per week.

That subsequent to her husband's death, claimant, Carrie Rose, applied for and received from the Federal Government a $50,000 benefit payable to her under the provisions of the Public Safety Officers Benefits Act, 42 U.S.C.S., See. 3796(E), following a determination of the U.S. Department of Justice that Trooper Rose died as a direct and proximate result of injuries sustained in the line of duty.

That in addition, claimant Carrie Rose applied for and received from the Arkansas Claims Commission a $10,000 benefit payable to her under the provisions of Act No. 43 of 1969, as amended, codified at Ark. Stats. Section 12-2348, following a determination of the Claims Commission that Trooper Rose was killed in the line of duty as an Arkansas State Trooper.

That in addition, claimant applied for and received from the Arkansas State Police Commission a $5,000.00 benefit payable to her under the provisions of Act. No. 91 of 1959, codified at Ark. Stats. Section 42-427, which provides that such benefits shall be payable to the wife of an officer of the State Police who loses his life in the course of his employment.

That subsequent to the death of her husband, claimant timely filed a claim for death benefits under the provisions of Section 15 of the Arkansas Workers' Compensation Act. That respondent Public Employee Claims Division concedes that decedent's death arose out of and during the course of his employment and is therefore a compensable death which would otherwise entitle claimant to such death benefits as

provided by law, but said Public Employee Claims Division contends that no benefits are presently payable to claimant as a result of the application of Act 929 of 1981, codified at Ark. Stats. Sections 12-3601-3608, specifically Section 12-3605(G) which provides:

> "In the event that any public employee who is entitled to receive workers' compensation benefits under the provisions of this Act as a result of injury, disability or death, and such injuries, disabilities, or death gives rise to an entitlement of benefits under a State or Federal program or under an Act of Congress providing benefits for public safety officers serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or as a firefighter or in any other capacity, the state workers' compensation funds shall be entitled to a credit against its liability for payment of workers' compensation benefits to the extent of the benefits received under any State or Federal program or Act of Congress."

Respondent Public Employee Claims Division contends it has no liability to claimant for the present payment of workers' compensation death benefits and will have no liability to commence payment of such death benefits until credit for the benefits received by claimant as hereinabove set forth has been exhausted at the rate of $140.00 per week commencing on the date of decedent's death.

Claimant, on the other hand, rejects this contention, contending that respondent Public Employee Claims Division is entitled to no credit for the $50,000 paid to her under the Public Safety Officers Benefits Act of 1976 (42. U.S.C.S. Section 3796) because such federal legislation expressly provides that:

> "The benefit payable under this part shall be in addition to any other benefit that may be due from any other source . . .",

and that such federal legislation supercedes and takes precedence over any conflicting legislation. Claimant contends that to allow such credit would amount to shifting the burden to the Federal Government for the first $50,000 of workers' compensation death benefits, and would defeat the expressed intent of Congress.

Claimant further contends that respondent Public Employee Claims Division is entitled to no credit for the $10,000 paid to her by the State Claims Commission under Ark. Stats. Section 12-2348, and the $5,000 paid to her under Ark. Stats. Section 42-427, on the grounds that such payments are remedial in nature and are supplemental to workers' compensation coverage.

DATED this 23rd day of November, 1983.

CARRIE ROSE, CLAIMANT

BY: NOYL HOUSTON
P.O. BOX 54
Trumann, AR 72472
(501) 483-6144

Attorney for Claimant

ARKANSAS STATE POLICE,
EMPLOYER, RESPONDENT

ARKANSAS PUBLIC
EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER,
RESPONDENT

BY: JERRY G. JAMES
Public Employee Claims Div.
Arkansas Insurance Dept.
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Little Rock, AR 72204
(501) 663-0355

Attorney for Respondents